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| APPLICATION NO. | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO. | CONFIRMATION NO. |
|-----------------|-------------|----------------------|---------------------|------------------|
|-----------------|-------------|----------------------|---------------------|------------------|

10/500,324

06/28/2004

Francesco Paolini

07552.0031

8942

22852

7590

07/06/2007

FINNEGAN, HENDERSON, FARABOW, GARRETT & DUNNER  
LLP

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EXAMINER

WIEST, PHILIP R

ART UNIT

PAPER NUMBER

3761

MAIL DATE

DELIVERY MODE

07/06/2007

PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

|   |                                      |                                       |  |
|---|--------------------------------------|---------------------------------------|--|
| <b>Advisory Action</b><br><b>Before the Filing of an Appeal Brief</b> | <b>Application No.</b><br>10/500,324 | <b>Applicant(s)</b><br>PAOLINI ET AL. |  |
|   | <b>Examiner</b><br>Phil Wiest        | <b>Art Unit</b><br>3761               |  |

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 05 June 2007 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

#### AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
- (a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ They raise the issue of new matter (see NOTE below);
- (c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
- The status of the claim(s) is (or will be) as follows:
- Claim(s) allowed: \_\_\_\_\_.
- Claim(s) objected to: \_\_\_\_\_.
- Claim(s) rejected: \_\_\_\_\_.
- Claim(s) withdrawn from consideration: \_\_\_\_\_.

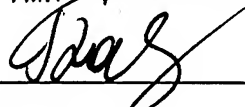
#### AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

#### REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_
13. ☐ Other: \_\_\_\_\_.

TATYANA ZALUKAEVA  
 SUPERVISORY PRIMARY EXAMINER



Continuation of 11. does NOT place the application in condition for allowance because:

Applicant's arguments filed 6/5/07 have been considered but are not persuasive. Applicant argues that it would not have been obvious to one of ordinary skill in the art at the time of invention to combine the devices of Weitzel, Derek, and Polaschegg because they fail to teach or suggest every limitation of claims 26 and 38. Specifically, applicant states that the prior art does not disclose the use of an upstream sensor to determine a reference temperature or a heat exchanger downstream of all treatment elements.

Regarding the placement of a temperature sensor upstream of all treatment devices, Weitzel discloses that temperature is controlled based on a reference temperature (the theoretical physiological temperature of the body). This implies that Weitzel realized the importance of reinfusing blood at normal physiological conditions. Polaschegg teaches the use of an upstream temperature sensor 206 placed in the access branch 220, and a regulating device for controlling the blood temperature based on output from the upstream temperature sensor 206 and a second temperature sensor 110 (Column 5, Lines 15-20 and Column 12, Lines 14-39). As stated in the previous action, the combination of the Weitzel reference with the sensor placement of Polaschegg would have been an obvious way to monitor temperature such that blood is reinfused into the body at the exact temperature at which it was removed.

Applicant correctly argues that Polaschegg does not specifically disclose the temperature controller being downstream of all treatment elements. For this reason, the Derek reference was used.

Regarding the placement of a heat exchanger downstream in the circuit, Derek clearly discloses that the heat exchanger may be placed in the return tube 50 (Column 10, Lines 7-11). It is obvious to anyone skilled in the art of fluid flow that heated fluids will lose heat when the surrounding environment is colder. For that reason, the placement of a heat exchanger in any position other than at the end of the return line would allow significant amounts of heat to escape from the blood, thereby changing the temperature of the reinfused blood.

Therefore, as stated in the previous action, it would have been obvious to one skilled in the art to combine the device of Weitzel with the heat exchanger placement of Derek in order to ensure that blood is reinfused at the proper temperature. .